



April 22, 2019

VIA E-MAIL

Chris Nakagawa
Daron Matsuura
Centinela Feed, Inc.
The Lotus Pet Food, Inc.
2727 Maricopa Street
Torrance, CA 90503
ckn001@centinelafeed.com
dmatsuura@lotuspetfoods.com

Re: Radagast Pet Food, Inc.'s Intellectual Property Rights

Dear Mr. Nakagawa and Mr. Matsuura,

We represent Radagast Pet Food, Inc. ("Radagast") in intellectual property matters. As you know, Radagast had been a longtime industry leader in premium raw cat food, selling lamb, chicken, turkey, venison, beef and pork varieties, all single protein recipes in tubs, of its Rad Cat® Raw Diet before economic concerns compelled the company to close its doors on October 15, 2018. Of course, despite the company's closure, the Radagast intellectual property—including its popular recipes, manufacturing techniques, product sourcing information, trademarks, and others—were still of tremendous value to a potential purchaser, among other assets.

Indeed, your companies, Centinela Feed, Inc. ("Centinela") and Lotus Pet Food, Inc. ("Lotus"), inquired about purchasing Radagast in October 2018, and took the next step on October 25, 2018, when Mr. Nakagawa executed the Radagast Nondisclosure Agreement ("the NDA"), enclosed for your reference. The NDA makes clear that the purpose of Radagast's disclosure of any confidential information to your companies was "evaluating [a] possible business transaction." These companies expressly agreed that they would "not use or disclose Confidential Information," except for this purpose, and further promised that,

Recipient will not reverse engineer Confidential Information or incorporate Confidential Information in any product that Recipient manufactures or sells, or will in the future manufacture or sell.

After Mr. Nakagawa signed the NDA, on October 30 and 31, 2018, Radagast sent Centinela/Lotus its Confidential Information Memorandum with detailed financial information, industry assessment, marketing plans and growth strategy; its Management Presentation; a revenue and volume spreadsheet showing the company's revenue and amount of all varieties sold from January 2016 - September 2018; Radagast's balance sheet; a list of production equipment; and all of its raw materials ingredient inventory. At the

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time Radagast provided this information, Centinela/Lotus acknowledged that it had no independent knowledge of how to manufacture a raw cat food.

Radagast's broker Carol Frank emailed you on November 5, left a voicemail on November 7, and emailed again on November 8, 2018. On November 9, Centinela/Lotus curtly responded that it had decided to pass. Radagast has not heard from you since. Meanwhile, Radagast has negotiated with other companies about potential asset purchase arrangements.

On March 20, 2019, during the Global Pet Expo in Florida ("Global"), Radagast received an email from a representative of a company with whom Radagast was in the final stages of negotiating an asset purchase. The email stated, "I just finished up a meeting with a distributor, who shared the news that Lotus has purchased your formula. Lotus has apparently been sharing this with certain people in the industry... Now I'm confused. I'd appreciate if you could share where things stand." The potential purchaser reduced its offer, stating the intellectual property was less valuable because of these rumors. Another potential purchaser broke off negotiations entirely.

The next day, Radagast learned from a friend who visited the Lotus booth at Global that Lotus is promoting a new raw cat food product, also sold in tubs and also including lamb, chicken, turkey, venison, beef and pork varieties. Two women working at the booth told a contact of Radagast's that they used to feed their cats Rad Cat® and the Lotus product is "exactly the same" except "we figured out that Rad Cat was low in thiamine so we are adding that one thing to the recipe to bump it up."

Needless to say, neither Centinela nor Lotus has purchased the Rad Cat® recipes. They have no right to use those recipes, reverse engineer the recipes based on confidential information they received from Radagast, or tell people in the industry that they have the Rad Cat® recipes or Radagast's sponsorship or authorization. These rights are at the heart of what Radagast can offer potential purchasers. By appropriating them—or even seeming to—without authorization, these companies have demonstrably devalued Radagast's intellectual property.

Radagast is also quite concerned that a company with—admittedly—no knowledge of how to manufacture a raw cat food in late October 2018 received a confidential list of Radagast's production equipment, raw materials in inventory, growth plans and projections, financials, and many other trade secrets, and then came out with its own identical product lineup using the "exact[] same" recipes just five months later.

Not only would the use of Radagast's confidential information for "any product [you] . . . will in the future manufacture or sell" be a clear breach of the NDA, it would also expose you to



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both civil and potentially criminal liability for trade secret misappropriation under state and federal law, which could be remedied by disgorging any profit you make on the new product line and also, if your conduct is deemed willful, by reimbursing Radagast its reasonable attorney fees in any lawsuit required to bring such conduct to a halt.

Also, as you may know, RAD CAT is a registered trademark of Radagast, with U.S. Trademark Registration No. 4201824, providing Radagast the exclusive, nationwide right to control the mark's use as a trademark for pet food. The Lanham Act prohibits the commercial use of:

... any word, term, name, or symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

15 U.S.C. § 1125(a). See also the prohibition against false advertising in 15 U.S.C. § 52, 55(a) (prohibiting dissemination of "an advertisement . . . which is misleading in a material respect," including "representations made or suggested by statement, word, design . . . or any combination thereof.").

State law also specifically prohibits a person or business from causing "confusion or of misunderstanding as to the source, sponsorship, approval, or certification of ... goods or services" or "as to affiliation, connection, or association with, or certification by, another." See e.g., ORS 646.608.

These laws prohibit you from, among other things:

- Using and/or profiting by any Radagast trade secret obtained "under circumstances giving rise to a duty to maintain its secrecy or limit its use";
- Falsely advertising and/or otherwise representing that Centinela or Lotus own or are using the Rad Cat® recipe or formulation;

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- Falsely stating or even suggesting that Radagast or Rad Cat® is affiliated with, connected to, or associated with any Centinela or Lotus products, or that Radagast sponsors or approves of the products in any way; and
- Referring to the RAD CAT trademark in a way that is likely to cause consumer confusion or mistake as to whether Radagast is affiliated with, connected to, or associated with Centinela or Lotus.

These laws provide remedies including preliminary and permanent injunctive relief, money damages, an accounting of profits, and the destruction or confiscation of products and promotional materials.

Accordingly, we ask that on or before May 1, 2019:

1. Centinela and Lotus return all Confidential Information provided by Radagast and "state in writing under oath" that "any electronic records or other materials containing Confidential Information" have been destroyed, as required by Paragraph 5 of the NDA;
2. Centinela and Lotus certify in writing that they will cease marketing and/or selling any product developed with the benefit of Radagast confidential information;
3. Lotus issue a statement on its website and across all social media sites, and release a statement to its email distribution list and to all distribution partners, that Lotus has not purchased and does not have the Rad Cat® formulae or recipes, and its products are in no way associated with Rad Cat® or Radagast; and
4. On behalf of both Centinela and Lotus, confirm in writing that, in the future, you will refer to Radagast and Rad Cat® only in a truthful, factual manner as part of lawful comparative advertising. See <https://www.practicalecommerce.com/Legal-Comparative-Advertising-Competitors-Trademarks-and-Infringement>.

If Centinela and Lotus timely comply with these demands, Radagast will agree to forgo pursuing the damages to which it is likely entitled thus far. If, however, Radagast is forced to file a lawsuit to address the companies' misconduct, it will look to recover its attorney fees and all available damages.

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We look forward to hearing from you soon and to resolving this matter in short order.

Sincerely,

IdeaLegal

A handwritten signature in blue ink, appearing to read "Elizabeth Milesnick", with a long horizontal line extending to the right.

Elizabeth Milesnick, Principal